

**Physical Therapist Licensing Board  
Administrative Rules Hearing  
October 22, 2004**

**MINUTES**

**Friday, October 22, 2004**

**Board Members Present:** Cathy Zarosinski, PT, MS, Chair; Jerry Nickell, PT, Vice Chair; Joana Freedman, PT; Pat Moore, MD, Physician Member; Cindy Cunningham, Public Member

**Board Members Absent:** Daiva Banaitis, PT, PhD; Nancy Wilson, PTA

**Staff:** James Heider, Executive Director; Sherri Paru, PT Clinical Advisor/Investigator

**Legal Counsel:** Carol Parks, AAG

The hearing was held Friday, October 22, 2004, in Room 120-C of the Portland State Office Building, 800 NE Oregon Street, Portland, OR. The hearing was convened at 12:00 Noon by Jim Heider, Board Executive Director and Presiding Hearing Officer.

Mr. Heider presented an opening statement asking all guests to sign the attendance log, which is on file with the Board. The hearing was recorded on Tape 1 Side A, titled, 10.22.04 Admin Rules Hearing and is available in the Board office.

Mr. Heider instructed the Board/Staff panel and the audience of the procedure he would use to conduct the hearing. Each Rule Division would be addressed, in sequential order, starting with Division 1. Mr. Heider would read the Rule Summary from the Notice of Proposed Rulemaking Hearing form. He would then open the floor up for testimony regarding the proposed rule changes for that Division, or any issues with regards to the Rules in that Division.

**Division 1 Procedural Rules**

After Mr. Heider read the Rule Summary, he opened the floor up for testimony.

Witness #1: Diana Godwin, Attorney at Law representing Oregon Physical Therapists in Independent Practice (OPTIP), a trade association representing approximately 110 independent practice physical therapy clinics throughout Oregon. Ms. Godwin was also a member of the Rules Advisory Committee and played a significant role as part of the Rules Drafting Sub-committee.

Prior to her testimony and on behalf of her clients, Ms. Godwin commended the Board for its work on the proposed rule changes, stating that the proposed rules are significantly clearer, easier to read, and organized in a coherent and logical order. They will help both the licensees and the public, to better understand the practice and ethical rules that govern physical therapy in Oregon. Although OPTIP supports adoption of the proposed rules, they have four exceptions they would like to present to the Board for reconsideration.

With regards to Division 1, Ms. Godwin testified that OPTIP is opposed to the Board eliminating the right for a licensee to appear before the Board following a contested case

hearing. Ms. Godwin cited that this is the licensee's final opportunity to present arguments regarding the Board's final order. The newly proposed rule, now in Division 1, OAR 848-001-0020, includes only the right to file written exceptions. A written/recorded copy, of Ms. Godwin's complete testimony and arguments regarding this matter, is on file in the Board office and available upon request.

Witness #2: Tracy Fritts, licensed PT, representing approximately 800 members of the Oregon Physical Therapy Association (OPTA). On behalf of the OPTA, Ms. Fritts applauded the efforts of the Board on this much needed, but time consuming, process. The OPTA also appreciated the Board inviting 3 members of the OPTA Board of Directors to serve on the Rules Advisory Committee. Although the proposed rule changes offer improved organization and clarity, there are a few changes the OPTA found objectionable.

With regard to Division 1, Ms. Fritts testified that the OPTA was opposed to the Board removing the right for a licensee to appear before the Board prior to receiving disciplinary action. Ms. Fritts cited that the Board should not be able to impose sanctions on a licensee they have never met, nor given the opportunity to explain in person. A written/recorded copy, of Ms. Fritts' complete testimony and arguments regarding this matter, is on file in the Board office and available upon request.

Witness #3: Arlene Harris, PT, former member of the Licensing Board, representing private practice. Ms. Harris testified that, from experience on the Board, there was a specific case where she wished the Board could have spoken directly with a licensee prior to imposing the final sanctions. Further, in talking with other PTs in the valley, it is felt that the Board needs to hear that person's story. Similar to the SOAP formatting in PT charting, the Board needs to have the whole case; the subjective, objective, the assessment, which the Board will make, and the plan. Ms. Harris closed with, let the licensee have their day in court. A recorded copy, of Ms. Harris' complete testimony and arguments regarding this matter, is on file in the Board office and available upon request.

#### **Division 40 Minimum Standards for Physical Therapy Practice and Records**

After Mr. Heider read the Rule Summary, he opened the floor up for testimony.

Witness #1: Bruce Alter, PT, Carolyn Alter, PT, representing Hollywood Physical Therapy. Mr. Alter testified that the change they were concerned with was section OAR 848-040-0110(3), which clarifies requirement that patient records shall be prepared on the date of service. They are in opposition to this change because it can be problematic, unrealistic, and impossible for the Board to enforce. Further, they were concerned that the Board would use this rule as a tool to sanction a PT when, in fact, the PT may be under investigation for something totally unrelated to documentation. Lastly, Mr. Alter feels that implementation, of this rule, would make PTs less efficient or less able to see patients. A recorded copy, of Mr. & Mrs. Alter's complete testimony and arguments regarding this matter, is on file in the Board office and available upon request.

Mr. Alter asked to present another issue. He stated he was now representing pediatric therapists in the school system, specifically, Willamette Educational Service District.

Mr. Alter spoke, as a proponent, to amending OAR 848-040-0155(1)(b), Standards for the Required Reassessment, which states that a physical therapist needs to perform a reassessment, for the children that are in the schools, at least every 60 days. Mr. Alter gave testimony noting that the current Board reassessment rule is in misalignment with the current federal statute Individual Disability Education Act (IDEA) rules. The IDEA definition of a Individual Education Program (IEP), requires a statement of how the child's progress towards the annual goal will be measured, and how the child's parents will be regularly informed, through such means as periodic report cards, at least as often as the parents are informed of their non-disabled child's progress. Mr. Alter asked the Board to consider amendment of the reassessment rule to better match the federal IDEA reporting requirements with the need for PT assessment for children in the school districts. In doing so, the school districts can make better use of their resources and dollars, using more PTA support to follow care plans developed by PTs, and the PTs would reassess based on the IEP. It would be easy to check. The Board could pull a student's IEP and the therapist's notes, to see if the IEP required quarterly or monthly reporting. And, that it was actually being done by the physical therapist on those dates. A written/recorded copy, of Mr. Alter's complete testimony and arguments regarding this matter, is on file in the Board office and available upon request.

Witness #2: Arlene Harris, PT, former member of the Licensing Board, representing private practice. OAR 848-040-0140(c), Record of the Plan of Care. Ms. Harris testified, in opposition to (c), requiring the proposed frequency and duration of treatment as part of the record of the Plan of Care. Ms. Harris cited it is easier when working with the insurance carriers, to state just the number of visits and the duration. A recorded copy, of Ms. Harris' complete testimony and arguments regarding this matter, is on file in the Board office and available upon request.

### **Division 5 Board Administration**

After Mr. Heider read the Rule Summary, he opened the floor up for testimony.

Witness #1: Carolyn Alter, PT, Hollywood Physical Therapy, commenting on OAR 848-005-0020(e), the increase in renewal fee to practice without referral from the current \$15.00 to \$50.00. Ms. Alter spoke, in opposition to this rule amendment, citing increasing financial hardship on the physical therapists already to maintain the continuing education requirements and CPR certification. A recorded copy, of Ms. Alter's complete testimony and arguments regarding this matter, is on file in the Board office and available upon request.

Witness #2: Diana Godwin, Attorney at Law, representing Oregon Physical Therapists in Independent Practice (OPTIP). Ms. Godwin spoke out in favor of the new Division 5, citing the new division makes the rules easier to understand and better organized. She also spoke in support of OAR 848-005-0030, requiring every PT provide current contact information. And also, supported OAR 848-005-0020(b), which added a new fee for the actual cost of conducting nationwide or statewide background checks to the application process. Ms. Godwin did speak in opposition to OAR 848-005-0020(1)(f), which creates the new \$50.00 fee called the delinquent processing fee. This will be charged if the licensee's renewal is postmark after March 15<sup>th</sup>. Based on feedback, from her clientele, there was a lot of concern regarding this additional late fee, stating that it may hurt

therapists in a difficult economic climate. Further, Ms. Godwin had a legal concern as to whether this new penalty can lawfully be imposed on a therapist who is in full compliance with ORS 688.100. And feels that if a therapist is in full compliance with ORS 688.100 (has renewed his/her license by April 1<sup>st</sup>), the Board does not have authority to impose an additional penalty. In fact, this rule could be considered, Ultra-virus, which is outside the scope of the authority granted to the Board by the Legislature. A written/recorded copy, of Ms. Godwin's complete testimony and arguments regarding this matter, is on file in the Board office and available upon request.

Witness #3: Tracy Fritts, PT, representing OPTA. Ms. Fritts testified in opposition to OAR 848-005-0020(e), the increase in renewal fee to practice without referral from the current \$15.00 to \$50.00. Ms. Fritts cited that the proposed increase is over 150% and stating that the increase is too excessive. The OPTA favors the Board looking for ways to decrease other administrative costs associated with Direct Access rather than increasing the fee so excessively. Further, Ms. Fritts spoke out in opposition to OAR 848-005-0020(1)(f), which creates the new \$50.00 fee called the delinquent processing fee. The OPTA members feel the deadline for renewal is March 31<sup>st</sup>, and the Board should not access a penalty before then. Perhaps, if the Board considered a positive incentive to have the licensee renew early, it would be more effective. A written/recorded copy, of Ms. Fritts' complete testimony and arguments regarding these matters, is on file in the Board office and available upon request.

Witness #4: Bruce Alter, PT. Mr. Alter spoke out in opposition to 848-005-0020(e), the increase in renewal fee to practice without referral from the current \$15.00 to \$50.00. Mr. Alter testifies that he maintains his Direct Access not because he has too in his particular setting, it is not required; however, he feels it pushes the profession of physical therapy forward. He would like to see the Board consider additional ways to encourage more therapists to acquire Direct Access. Mr. Alter feels that by increasing the costs, the Board discourages those, like himself, who maintain Direct Access as a matter of professionalism. A recorded copy, of Mr. Alter's complete testimony and arguments regarding this matter, is on file in the Board office and available upon request.

Witness #5: Arlene Harris, PT. Ms. Harris spoke in opposition to OAR 848-005-0020(1)(f), which creates the new \$50.00 fee called the delinquent processing fee. Ms. Harris cited the confusion it would cause. It could end up being more confusing then helpful to the Board. A recorded copy, of Ms. Harris' complete testimony and arguments regarding this matter, is on file in the Board office and available upon request.

### **Division 10 Licensing of Physical Therapists, Physical Therapist Assistants, and Temporary Permit Holders**

After Mr. Heider read the Rule Summary, he opened the floor up for testimony.

Witness #1: Diana Godwin, Attorney at Law, representing Oregon Physical Therapists in Independent Practice (OPTIP). Commented on Division 10 as it relates to the new proposed delinquent processing fee in Division 5. Citing that if Board Counsel advises a change, with respect to the issue previously raised, the Board would also want to take a look at Division 10 OAR 848-010-0033(3)(4)&(5), which also references the delinquent processing fee.

Witness #2: Arlene Harris, PT. Ms. Harris testified with regards to temporary permit, OAR 848-010-0026. Current rule requires the surrender of a temporary permit in the event the applicant fails the NPTE. Ms. Harris feels that a temporary permit is issued for 90 days and, regardless of whether an applicant fails the NPTE or not, the permit should remain valid for the 90-day period. A recorded copy, of Ms. Harris' complete testimony and arguments regarding this matter, is on file in the Board office and available upon request.

### **Division 15 Physical Therapist Assistants**

After Mr. Heider read the Rule Summary, he opened the floor up for testimony.

No comments or testimony presented on Division 15

### **Division 20 Physical Therapist Aides**

After Mr. Heider read the Rule Summary, he opened the floor up for testimony.

No comments or testimony presented on Division 15

### **10 Minute Break**

### **Division 30 Practice Without Referral**

After Mr. Heider read the Rule Summary, he opened the floor up for testimony.

No comments or testimony presented on Division 30

### **Division 45 Grounds for Discipline and Sanctions**

After Mr. Heider read the Rule Summary, he opened the floor up for testimony.

Witness #1: Diana Godwin, Attorney at Law, representing Oregon Physical Therapists in Independent Practice (OPTIP). Ms. Godwin wanted to testify on two issues on Division 45, the first rule OAR 848-045-0010, Authority and Sanctions. The original opinion of the Advisory Group was that the Board would consider both mitigating and aggravating factors, as circumstances, when considering an imposed sanction. The Board chose to remove the wording that allowed for mitigating factors and only left in aggravating factors. Her group opposes the elimination of mitigating factors.

Ms. Godwin's second issue is in regards to OAR 848-045-0020(2), Grounds for Discipline. Ms. Godwin testified in opposition to Subsections (t) and (u), which provides that a licensee, who practices with a lapsed license after March 31<sup>st</sup>, must self report to third party payors because physical therapist services were delivered by a person whose license was in a lapsed state. Further, the licensee must provide evidence to the Board that the self reporting was done. This rule is going to cause enormous problems and financial hardships, and potential repercussions for future credentialing of a PT by a third party payor. It will also present enormous logistical problems for the Board. Aside from

being burdensome and causing unnecessary invasion of patient privacy, Ms. Godwin does not think it is necessary for the Board to protect the interest of third party payors, nor is the role of the Board to do so. During the third party payor credentialing process, any actions taken against a PT will be disclosed; the third party payor will have a copy of the Order and the dates the licensee treated patients without a valid license. The third party payor already has the ability to seek reimbursement or take other actions, including canceling or not renewing a PT's credentials. There may also be a legal question, as to whether the Board is acting outside its statutory authority, in adopting these two provisions. A written/recorded copy, of Ms. Godwin's complete testimony and arguments regarding these matters, is on file in the Board office and available upon request.

Witness #2: Tracy Fritts, PT, representing OPTA. Ms. Fritts testified in objection to the Board omitting, from the final amended rules draft, the section on mitigating circumstances. Citing that if the Board gets to consider aggravating circumstances, it is only fair that mitigating circumstances also be considered.

Ms. Fritts also testified in opposition to OAR 848-045-0020(2)(s). Ms. Fritts cited that in large companies and hospitals organizations, it is rare and inefficient for PTs and PTAs to be involved in staffing and HR duties, such as credentials tracking. Just because a PT manager does someone's performance review, doesn't necessary mean that they are responsible for these things, or have the ability to look at them individually.

Lastly, Ms. Fritts testified in opposition to OAR 848-045-0020(2)(t)(u), requiring a licensee who has provided services with a lapsed license to self report. It is also felt that this oversight is covered by other organizations. Also, in cases where there is contact PT labor; or other similar situations the PT does not always have access to, or knowledge of, third party payors. Requiring a therapist to do this individually would be very tedious time consuming and repetitious since it is felt that other organizations already handle this situation. Also cited, is the undue amount of Board time to administer and track the follow-through. The OPTA members prefer that their renewal fees be used for other administrative costs. A written/recorded copy, of Ms. Fritts' complete testimony and arguments regarding these matters, is on file in the Board office and available upon request.

Witness #3: Arlene Harris, PT. Ms. Harris reiterated the opposition to OAR 848-045-0020(2)(t)(u), requiring an unlicensed PT or PTA to self report to third party payors for providing unlicensed services. Third party payors and insurance companies handle this oversight themselves. Ms. Harris noted that a person is still a physical therapist even though they did not renew their license. This is not really protecting the public and feels this is another issue outside the Board's jurisdiction. A recorded copy, of Ms. Harris' complete testimony and arguments regarding this matter, is on file in the Board office and available upon request.

### **Division 50 Substance Abuse Diversion**

After Mr. Heider read the Rule Summary, he opened the floor up for testimony.

No comments or testimony presented on Division 50.

Mr. Heider opened the floor for comments on any of the rules that may not have been presented or brought forth earlier.

Witness #1: Jane Cedar, PT. A comment on Division 40, OAR 848-040-0145, Standards for Providing Treatment Section (1). "A licensee shall not permit an aide to administer a procedure or modality to a patient, unless "the" licensee has previously"...this is a small issue, but by using the word "the", it seems as if you are tying it to a specific individual. I'm thinking that is not what the Board intended. You do want the treatment administered by "a" licensed person, PT or PTA, prior to the Aide doing the treatment. A recorded copy, of Ms. Cedar's complete testimony regarding this matter, is on file in the Board office and available upon request.

Mr. Heider again opened the floor for comments on any of the rules that may not have been presented or brought forth earlier.

Cathy Zarosinski, Board Chair, asked to make a comment. I would just like to clear up any misconceptions that may have been created and that is, that the Board has never refused to allow a licensee to come to the Board per their request. They never have, and I certainly, as Chair of the Board, don't ever intend for that to happen. So, I don't want anyone to think that this is the case.

Mr. Heider again opened the floor for comments on any of the rules that may not have been presented or brought forth earlier.

Without further comments, Mr. Heider stated that written testimony will still be received by the Board, if in the Board's office by 4:30 PM that day. Mr. Heider closed the floor to testimony and adjourned the hearing at 2:15 PM.